

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

GEORGE HARP,

Plaintiff,

v.

SECRETARY OF CORRECTIONS,
(D.O.C.), individually and official
capacity; SOUTH DAKOTA PRISON
MEDICAL DEPARTMENT STAFF,
individually and official capacity;
ROBERT DOOLEY, Warden, Mike
Durfee State Prison, individually
and official capacity; DR. EUGENE
REGIER, South Dakota Department
of Health, individually and official
capacity; DR. MELVIN WALLINGA,
South Dakota Department of
Health, individually and official
capacity; DOUGLAS WEBER,
Warden, South Dakota State Prison,
individually and official capacity;
and KEITH DITMANSON, Unit
Manager, South Dakota State
Penitentiary, individually and
official capacity,

Defendants.

Civ. No. 11-4149-KES

DEFENDANTS' STATEMENT
OF UNDISPUTED
MATERIAL FACTS

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1(a),
Defendants submit this Statement of Undisputed Material Facts in support of
their Motion for Summary Judgment.

Parties and Claims.

1. Plaintiff George Harp is an inmate in the custody of the South
Dakota Department of Corrections. He was previously incarcerated at Mike

Durfee State Prison in Springfield, South Dakota, and is currently incarcerated at the South Dakota State Penitentiary in Sioux Falls, South Dakota.

(Doc. 36.)

2. Harp initiated this lawsuit against Defendants alleging that they were deliberately indifferent to his serious medical needs under the Eighth Amendment. Harp also alleges that he was assaulted and threatened by officers at Mike Durfee State Prison. (*Id.*)

3. Defendant Douglas Weber is employed by the South Dakota Department of Corrections as the Director of Prison Operations and Chief Warden of the South Dakota State Penitentiary in Sioux Falls, South Dakota. (Doc. 41)

4. Defendant Robert Dooley is employed by the South Dakota Department of Corrections as the Warden of the Mike Durfee State Prison in Springfield, South Dakota. (*Id.*)

5. Defendant Dr. Eugene Regier is a medical doctor licensed to practice in the State of South Dakota and is employed by the South Dakota Department of Health. Dr. Regier provides medical care to inmates at the South Dakota Penitentiary in Sioux Falls, South Dakota. (*Id.*)

6. Defendant Dr. Melvin Wallinga is a medical doctor licensed to practice in the State of South Dakota and is employed by the South Dakota Department of Health. Dr. Wallinga provides medical care to inmates at the Mike Durfee State Prison in Springfield, South Dakota. (*Id.*)

7. Defendant Keith Ditmanson is a Unit Manager at the South Dakota State Penitentiary. (*Id.*)

8. Plaintiff also named as Defendants the Secretary of the Department of Corrections and the "South Dakota Prison Medical Department Staff." (Doc. 36)

9. Plaintiff's original Complaint named Mike Durfee State Prison and South Dakota State Prison as Defendants. In his Amended Complaint, plaintiff removed them as Defendants. (Doc. 1, Doc. 36)

10. Plaintiff sued all Defendants in their individual and official capacities. (Doc. 36)

Failure to Exhaust Administrative Remedies

11. The administrative remedy policy implemented by the DOC and followed by both the South Dakota State Penitentiary and Mike Durfee State Prison requires that an inmate follow a two-step process to present complaints concerning the application of any administrative directive, policy, unit rule, or procedure. First, the inmate must file an Informal Resolution Request. Second, if the issue is not resolved, the inmate must, within five days of the Informal Resolution Request response, file a Request for Administrative Remedy. For certain issues, inmates are also able to appeal to the Secretary of Corrections. (Ditmanson Aff., ¶ 5, Ex. A3-5, Stanwick-Klimek Aff., ¶¶ 3-4.)

12. Inmate Harp did not file, or attempt to file, an Informal Resolution Request or a Request for Administrative Remedy during his stay at Mike Durfee State Prison. (Stanwick-Klimek Aff., ¶ 4)

13. Harp's records show that he has utilized the administrative remedy process on only one occasion, for one issue, while at the South Dakota State Penitentiary in Sioux Falls. (Ditmanson Aff., ¶ 7, Ex. B1-4)

14. On March 12, 2012, Harp filed an Informal Resolution Request regarding the calculation of his parole eligibility date. (*Id.*, ¶ 8, Ex. B1)

15. On March 27, 2012, Harp was informed that his parole eligibility date stands as previously stated. (*Id.*, ¶ 9, Ex. B1)

16. On March 29, 2012, Harp filed a Request for Administrative Remedy regarding the calculation of his parole eligibility date. (*Id.*, ¶ 10, Ex. B2-3)

17. On April 13, 2012, Harp received a response to his Request for Administrative Remedy from Warden Weber informing him that his initial parole date is December 3, 2016. (*Id.*, ¶ 11, Ex. B4)

18. Inmate Harp has not utilized, or attempted to utilize, the administrative remedy process for issues related to this lawsuit or any other issues. (*Id.*, ¶ 13)

19. Unit Manager Keith Ditmanson was not aware of the issues in Harp's lawsuit until the lawsuit was filed. (*Id.*, ¶ 14)

Dated this 9th day of August, 2012.

/s/ Matt Roby
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern Division by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

George Harp #54099
South Dakota State Penitentiary
P.O. Box 5911
Sioux Falls, SD 57117-5911

/s/ Matt Roby
Matt Roby
Assistant Attorney General